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Robert Kapalka Tyco Electronics Corporation Suite 140 4550 New Linden Hill Road Wilmington, DE 19808			NGUYEN, CHAUN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WAYNE BRICKER and
RICHARD WALTER SPEER

Appeal 2009-000005
Application 10/659,156
Technology Center 2800

Decided: ¹July 2, 2009

Before CATHERINE Q. TIMM, LINDA M. GAUDETTE, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s decision finally rejecting claims 1-22 (Final Office Action, mailed Nov. 9, 2006), the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Independent claim 1 is illustrative of the subject matter on appeal, and is reproduced from the Claims Appendix to the Appeal Brief (“Br.”), filed Jul. 9, 2007:

1. A cable comprising:

a core comprising at least one twisted pair of insulated wires; and
a jacket surrounding said core, said jacket comprising at least one spline projecting inward from an inner surface of said jacket, wherein at least a portion of said twisted pair is positioned between said spline and a center of said core, wherein said at least one spline is in contact with said twisted pair to prevent relative movement of said jacket with respect to said twisted pair.

Appellants request review of the Examiner’s rejection of claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Despard (US 6,310,295, issued Oct. 30, 2001) in view of Wentworth (GB 725,624, issued Mar. 9, 1955). (Br. 10.)

Based on our review of the respective positions of the Examiner and the Appellants, the sole issue presented for our review is: have Appellants shown reversible error in the Examiner’s determination that the ordinary artisan would have been motivated to add splines to the interior of Despard’s cable housing jacket to achieve the benefits disclosed in Wentworth?

We answer this question in the affirmative.

Wentworth relates to “insulated wires and cables in which a core, consisting of a conductor with a covering of plastic material, or a group of

such cores, is enclosed in a directly adjacent layer of the same or similar material.” (Wentworth, p. 1, ll. 9-13.) More specifically, Wentworth is directed to minimizing damage which occurs to the covering when the adjacent layer, referred to as the outer layer or sheath, is removed to expose the core. (*See id.* at ll. 13-37.) As argued by Appellants, the damage to these insulated wires and cables results from the use of the same or similar materials for the covering and the outer layer, e.g., tearing and cracking of the covering due to adhesion to the outer layer (*id.* at ll. 18-23). (*See generally*, Br. 13-16.) Appellants maintain that this type of damage would not occur in Despard’s cable since Despard’s core (i.e., conductor pairs) and housing jacket are made of different materials, the materials being of the type which minimize adhesion. (*Id.* at para. bridging 14-15.) According to Appellants, the conductor pairs within Despard’s housing jacket are also twisted and spaced apart, such that contact between the conductor pairs and housing jacket is minimized and adhesion of the type occurring in Wentworth’s wires and cables is less likely to occur. (*Id.* at 16.)

“Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant’s disclosure, such a reconstruction is proper.” *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971). The fact finder must be aware “of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 36

(1966) (warning against a “temptation to read into the prior art the teachings of the invention in issue”)).

Appellants have persuasively argued that the evidence of record fails to support the Examiner’s determination that the ordinary artisan, upon considering the teachings of Despard and Wentworth, would have been motivated to modify Despard’s housing jacket to include splines. Wentworth utilizes ribs, or splines, to minimize contact between two similar materials, i.e., the covering and outer layer. As pointed out by Appellants, Despard’s core and housing jacket are made of different, non-adhesive materials and contact between them is already minimized by the configuration of the conductor pairs.

Therefore, we are in agreement with Appellants that the Examiner’s obviousness determination is based on improper hindsight reasoning. Accordingly, we cannot sustain the rejection of claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Despard in view of Wentworth.

REVERSED

tc

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